TH 03-0137-C T/H Doe v Coats
Judge John D. Tinder Signed on 08/29/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JANE DOE, MARY ROE, JANE DOE NO. 2, Plaintiffs, vs. LLOYD F. COATES, GARY BYRER, FRANKLIN D. HALL, JIMMIE A. YAGLE, ROWE SARGENT, MIKE HELD, TIMOTHY J. LAVERY, NORTH KNOX SCHOOL CORPORATION, Defendants.	)	NO. 2:03-cv-00137-JDT-WGH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JANE DOE, MARY ROE and JANE DOE NO. 2, on behalf of themselves and as parents of A.W., J.B., and A.L., and A.W., J.B. and A.L., et al.,	)	
Plaintiffs,	)	
vs.	)	2:03-cv-0137-JDT-WGH
LLOYD F. COATS, individually, GARY BYRER, FRANKLIN D. HALL, JIMMIE A. YAGLE, ROWE SARGENT, and MIKE HELD, individually and as Members of the Board of Trustees of North Knox School Corporation, TIMOTHY J. LAVERY, individually as Superintendent of North Knox School Corporation, and NORTH KNOX SCHOOL CORPORATION,	)	
Defendants.	)	

ENTRY ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DKT. NO. 72)[1]

Plaintiffs Jane Doe, Mary Roe, Jane Doe No. 2, A.W., J.B., and A.L. filed their original May 13, 2003, complaint seeking damages under 20 U.S.C. § 1861(a) ("Title IX") and 42 U.S.C. § 1983 ("§ 1983"). The Plaintiffs subsequently filed an amended complaint alleging the same substantive claims on April 30, 2004; namely, that Defendants Lloyd Coats, Franklin D. Hall, Jimmie A. Yagle, Rowe Sargent, Mike Held, Gary Byrer, Timothy J. Lavery, and the North Knox School Corporation violated their

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

rights under the above statutes by failing to intervene and stop Defendant Coats's sexual molestation of Plaintiffs' A.W., A.L. and J.B. This entry concerns the motion for summary judgment of Defendants Hall, Yagle, Sargent, Held, Byrer, Lavery and North Knox School Corporation. For the reasons stated below, the motion will be granted in part and denied in part.

I. Background

The Plaintiffs' complaint and amended complaint allege violations of Title IX and § 1983 by the Defendants. The Plaintiffs Jane Doe, Mary Roe, and Jane Doe No. 2 bring claims individually, and on behalf of their minor children, A.W., A.L. and J.B. The Plaintiffs allege that between the summer of 2000 and May 2002, school bus driver and Defendant Lloyd Coats sexually molested the minor Plaintiffs, and that the Defendant school officials failed to intervene and stop that molestation.

At all pertinent times, the minor Plaintiffs were young male residents of Knox County, Indiana and attended Knox County Corporation schools. Coats was a bus driver hired by the School Corporation from the summer of 2000 until his June 2002 resignation. (Def.'s Desig. & Statement Material Facts Not in Dispute ¶ 3.) The other individual Defendants, as members of the board or superintendent of the school corporation, had the authority to supervise, hire and fire Coats. (Am. Comp ¶¶ 2-3.) During the 2001-2002 school year, Coats drove the bus that A.W. rode to and from school each day. (A.W. Dep. at 14-18.) While Coats did not drive J.B.'s school bus,

J.B. did ride Coats's school bus approximately five times from school to A.W.'s home. (J.B. Dep. at 26.)

During the 200-2002 school years, the Plaintiffs allege that Coats sexually molested each Plaintiff, at various locations, including on his school bus, in exchange for tobacco, alcohol, pornography, and money. (Am. Comp. ¶ 6.) A.W. states that between the summer of 2000 and June 2002, he was molested in Coats's home, office, and school bus. (A.W. Dep. at 33-43, 97.) J.B. makes similar statements, though he does not say that he was molested in Coats's Knox County school bus. (J.B. Dep. at 29-31, 48-58.) J.B. testified that on the occasions that he road on Coats's school bus from school to A.W.'s house, he was dropped off at A.W.'s house and there was no sexual contact with Coats. (J.B. Dep. at 48.) When Coats picked up J.B. to take him places to have sex, Coats drove his personal pickup truck; he did not drive the school bus. (*Id.* at 27, 30-31, 48.)

A.L.'s sexual contact with Coats took place after the 2001-2002 school year was over. None of the contact occurred on school property or on the school bus. The first occurred when Coats drove to A.L.'s house looking for J.B. Coats and A.L. ended up at the levy, having driven there in Coats's personal vehicle. (A.L. Dep. at 10-12, 15.) On that occasion, while inside the vehicle at the levy, Coats put his hand on A.L.'s upper thigh. (*Id.* at 11-12.) On the second occasion, which was during the summer before school began, Coats picked up A.L. in his pickup truck and drove him to Coats's house where Coats asked A.L. if he wanted to have sex, and A.L. responded "no." (*Id.* at 12-13, 16, 28, 32.) Eventually Coats engaged in sexual activity with A.L., having locked

him in the bedroom. (*Id.* at 13-15.) There was no further sexual contact between Coats and A.L., though Coats later asked A.L. to have sex with him and A.L. refused. (*Id.* at 15-16.) Shortly thereafter, A.L. sought assistance from local police. (A.L. Dep. at 28, 32.) A.L. has never ridden on the school bus driven by Coats. (*Id.* at 27.)

Other than A.L.'s confession to police, the minor Plaintiffs told no parent or other authority about their alleged molestation until June 2002, when allegations about Coats became public. (A.L. Dep. at 32-33; A.W. Dep. at 75; J.B. Dep. at 28-29.) None of the minor Plaintiffs continue to attend schools within the North Knox School Corporation; A.L. was sentenced to a juvenile delinquent facility for an unrelated incident (A.W. Dep. at 5, 41-42), and A.W. and J.B. were expelled at least in part for fighting. (J.B. Dep. at 8-9; A.W. Dep. at 61-62.) A.W. claims that he was fighting other students for calling him names such as "faggot." (A.W. Dep. at 61-62.)

The Plaintiffs further allege that Knox County school officials knew about Coats's molestations, but did nothing to investigate or stop him. Former Bicknell resident Richard "Butch" May states that he informed School Board Member Gary Byrer, while they were waiting in line together at the local McDonald's during the 2001-2002 school year that:

> I had two men that wanted to witness, wanted to testify if they needed to to the school board that he [Coats] was doing improper conduct with the kids, of a sexual nature to the young boys. That he was offering them alcohol and partying and getting them drunk out at his house, and taking advantage of them, videotaping them, and all kinds of things.

(May Dep. at 10-11.) Unlike the above statement, Byrer only remembers May stating that women at his church "raised some concerns" about Coats. (Byrer Dep. at 14-15.) Byrer does remember, however, that he took the matter to Superintendent Lavery who told him that they were "not an investigating agency" and to tell May to "report it to child protective services." (*Id*. at 15-16.)

The Plaintiffs brought the instant action under Title IX and § 1983, contending in short that their statutory and constitutional rights were violated because the Defendants had notice as to Coats's actions, and yet took no action to investigate and abate his criminal activity. The Defendants filed their summary judgment motion thereafter, claiming that they had no notice of Coats's actions toward the Plaintiffs, nor did they have a custom or policy of violating citizens' constitutional rights. The Defendants further contend that the Plaintiff Jane Doe lacks standing under Title IX.

II. Discussion

This case is before the court pursuant to Defendants' Federal Rule of Civil Procedure 56 motion for summary judgment. Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The court must construe the evidence in the light most favorable to the nonmoving party and "all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

255 (1986). "The initial burden is on the moving party to identify those portions of the record that demonstrate the absence of a genuine issue of material fact. If the nonmoving party bears the burden of proof on an issue, he must then go beyond the pleadings and affirmatively demonstrate a genuine issue of material fact for trial." *Johnson v. City of Fort Wayne, Ind.*, 91 F.3d 922, 931 (7th Cir. 1996) (citing *Celotex*, 477 U.S. at 324). That burden is not met when the nonmoving party fails to demonstrate that the record, taken as a whole, could permit a rational finder of fact to rule in its favor. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

A. Title IX

Plaintiffs Jane Doe and A.W. bring their case under Title IX, which prohibits sexual discrimination in educational programs or activities supported by federal grants. 20 U.S.C. § 1681(a).[2]

The Defendants argue that under Title IX Plaintiff Jane Doe does not have standing to bring this case on her own behalf because as a parent she is not a participant in, nor is she personally benefitted by, the federally funded programs in question. They cite *Rowinsky v. Bryan Independent School District*, 80 F.3d 1006, 1010 (5th Cir. 1996), to bolster their position. That court finds that, although a parent may bring a claim as a minor child's next of friend,

[2] 20 U.S.C. § 1681(a) provides that: "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]"

> nothing in the statutory language provides [plaintiff/parent] with a personal claim under Title IX. Even assuming that Title IX protects persons other than students and employees, [plaintiff/parent] has failed to assert that she was excluded from participation, denied the benefits of, or subjected to discrimination under any education program or activity. Absent such a claim, the plain language of title IX does not support a cause of action by [plaintiff/parent].

Id. This court agrees. Jane Doe has made no demonstration that she somehow personally benefitted from, or participated in North Knox School Corporation's busing program. Nor has she cited any authority to support her position that she has standing here because she consented to her child's participation in school activities and programs. Therefore, the court finds that she lacks standing to bring a Title IX claim on her own behalf. *Id.*; *see also Haines v. Metro. Gov't of Davidson County*, 32 F. Supp. 2d 991, 1000 (M.D. Tenn. 1998) (holding parents may bring Title IX claim as next of friend of daughter, but could not seek relief under Title IX in their individual capacities).

Even though the statute does not stipulate compensatory damage relief for plaintiffs, successful plaintiffs suing under Title IX may nonetheless receive compensatory damages. *Cannon v. Univ. of Chi.*, 441 U.S. 677, 717 (1979) (holding that the statute by implication entitles a person injured by a violation to sue for damages). When, however, the claim for damages is based on the behavior of an employee of the Title IX recipient, the plaintiff must prove that "an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998); *Delgado v. Stegall*, 367 F.3d 668, 671 (7th Cir. 2004).

Defendants argue that summary judgment in their favor is appropriate as they did not have actual notice of Coats's actions as required by the Supreme Court's standard under *Gebser* for Title IX liability. Defendants cite to the Seventh Circuit cases *Delgado v. Stegall* and *Gabrielle M. v. Park Forest-Chicago Heights, Illinois School District*, 315 F.3d 817 (7th Cir. 2003), to further support their notion of a strict standard of actual notice.[3] The *Delgado* court finds that: "under the Supreme Court's formula, the plaintiff in a Title IX damages suit based on a teacher's behavior must prove actual knowledge of misconduct, not just actual knowledge of the risk of misconduct, and must also prove that the officials having that knowledge decided not to act on it." *Delgado*, 367 F.3d at 672. Similarly, the court in *Gabrielle M.* states that: "actual—not constructive—notice is the appropriate standard in peer harassment cases [under Title IX]." *Gabrielle M*., 315 F.3d at 823. The Defendants further emphasize that the Supreme Court, in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 641 (1999), reiterated its previous actual notice standard from *Gebser*. The *Davis* Court concluded that: "a recipient of federal education funds may be liable in damages under Title IX where it is deliberately indifferent to known acts of sexual harassment by a teacher." *Id*.; *see also Baynard v. Malone*, 268 F.3d 228, 237 (4th Cir. 2001) (holding that a school district was not liable

[3] Defendants also cite *Smith v. Metropolitan School District Perry Township*, 128 F.3d 1014 (7th Cir. 1014), which is factually distinguishable as there was no evidence that the school officials knew of the teacher's sexual harassment of a student and failed to respond. The teacher and student had successfully hid their ongoing sexual relationship. The facts did not support a reasonable inference that the school officials had actual knowledge of the relationship. However, once the student reported the teacher's harassment, the school "took swift and decisive action[.]" *Id.* at 1034. The facts of *Smith* stand in stark contrast to the genuine issues of material fact raised in the instant case.

under Title IX for lack of actual notice); *P.H. v. Sch. Dist. of Kansas City*, 265 F.3d 653, 663 (8th Cir. 2001) (rejecting a negligence standard under Title IX and "concluding instead that Title IX liability attaches only when the school district has actual knowledge and remains indifferent to acts of teacher-student harassment"). Furthermore, the Seventh Circuit elaborated in *Delgado* that a school official's liability under Title IX could be established when the failure to take steps against known or obvious risks is reckless, that is, when the risks are so great "that they are almost certain to materialize if nothing is done, for it is only in such cases that recklessness regarding the consequences if the risk materializes merges with the intention to bring about the consequences (more precisely, to allow the consequences to occur though they could be readily prevented from occurring)." *Delgado*, 367 F.3d at 672 (citations omitted).

Under the above authority, the Defendants' contentions that the Plaintiffs' Title IX claims should fail for lack of actual notice are misguided at the summary judgment stage. Defendants argue that May's statement to Byrer concerning Coats's sexual molestation of young boys was vague, hearsay, and did not contain any allegations of sexual harassment in a school activity or program. The Defendants' first two points merely represent their opinion that May's statements do not reach the level of notice required to meet the standard. The Defendants' last point is also weak as both May and Byrer knew that Coats was a bus driver employed by the school corporation, and could therefore use his employment to access young boys.[4] Though this is a close case and

[4] Defendants use this same point to argue that they need not even meet the lesser "substantial risk" test proffered by *Hart v. Paint Valley School Dist*., No.

(continued...)

the evidence of actual notice is slim, the court concludes that Plaintiffs have marshaled enough evidence to raise a genuine issue of material fact regarding Byrer's and Lavery's actual knowledge of Coats's molestation of young boys. Thus, the court is hesitant at the summary judgment stage to decide as a matter of law that the school officials were not put on actual notice. Plaintiffs' evidence also raises a genuine issue of material fact as to Byrer's and Lavery's knowledge that the boys on Coats's bus were at so great a risk of being molested that would support a finding that they were reckless in failing to take steps to prevent further molestation by Coats.

As properly stated by the court in *Hart*: "[w]hile the complaints may be unsubstantiated by corroborating evidence and denied by the allegedly offending [employee], whether such complaints put the school district on notice of a substantial risk to students posed by a[n employee] is usually a question for the jury." 2002 WL 31951264 at *6 (denying defendants' motion for summary judgment on Title IX claims in part because genuine issue of material fact existed as to whether school board knew of a substantial risk of sexual abuse to student); *see also Doe v. Green*, 298 F. Supp. 2d 1025, 1034 (D. Nev. 2004) (finding that a "reasonable jury could conclude that [plaintiffs' allegations if proven] . . . were sufficient to establish acts of sexual harassment of which school officials had notice"). In the instant case, the Defendants' arguments go to the

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[4](...continued)
C2-01-004, 2002 WL 31951264 (S.D. Ohio Nov. 15, 2002), namely that they had no notice of sexual discrimination *in the school's programs*. The Defendants make the same argument again in contending that the school did not act with reckless indifference to May's statements to Byrer. As noted above, both Byrer and May knew that Coats was a school bus driver. One can reasonably infer that an allegation of sexual molestation by a school bus driver would implicate that school's programs.

extent, not the existence, of the school officials' knowledge of Coats's molestation of boys.

Accordingly, the court finds that summary judgment is inappropriate on A.W.'s Title IX claim, but Jane Doe's Title IX claim will be dismissed for lack of standing.

B. § 1983

Plaintiffs Mary Roe, Jane Doe No. 2, J.B. and A.L bring claims against the Defendants for violation of their constitutional rights under 42 U.S.C. § 1983. "To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) the defendant deprived the plaintiff of a right secured by the Constitution and laws of the United States, and (2) the defendant acted under color of state law." *Reed v. City of Chi.*, 77 F.3d 1049, 1051 (7th Cir. 1996). In order to find § 1983 liability on the part of a government entity, such as a school district, it must be proven that the entity had a policy or custom of violating citizens' constitutional rights. *Monell v. Dep't of Soc. Servs*., 436 U.S. 658, 691 (1978). Here, the Plaintiffs claim that the Defendant school officials created a *de facto* policy of deliberate indifference to sexual abuse by knowingly allowing the school corporation's bus driver to violate students' constitutional rights to bodily integrity under color of state law.[5]

[5] Such a constitutional right to bodily integrity under the Due Process Clause of the Fourteenth Amendment is widely recognized. *See*, *e.g.*, *Albright v. Oliver*, 510 U.S. 266, 271-73 (1994).

The Defendants argue that the Plaintiffs' claims under § 1983 fail because there was no causal link between any School Corporation policy and Coats's misconduct; namely, that the "policy" did not cause the constitutional violation because Coats was not acting under color of state law, that is, there was no state action.[6] The Supreme Court has said:

> To constitute state action, "the deprivation must be caused by the exercise of some right or privilege created by the State . . . or by a person for whom the State is responsible," and "the party charged with the deprivation must be a person who may fairly be said to be a state actor." [citation omitted]. "State employment is generally sufficient to render the defendant a state actor." It is firmly established that a defendant in a § 1983 suit acts under color of state law when he abuses the position given to him by the State. Thus, generally, a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.

West v. Atkins, 487 U.S. 42, 49-50 (1988). The Defendants' citation to cases such as *Becerra v. Asher*, 105 F.3d 1042 (5th Cir. 1997) (holding school district and administrators could not be held liable for teacher's sexual assaults of student since actions did not occur under color of state law where the assaults occurred at the student's home and after the student had withdrawn from the school), and *D.T. by M.T. v. Independent School District No. 16*, 894 F.2d 1176 (10th Cir.) (teacher's molestation of student during summer vacation when acts occurred during basket ball camp

[6] The "state action" required under the Fourteenth Amendment and "color of law" requirement under § 1983 are synonymous as used in this context. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 (1982); *Becerra v. Asher*, 105 F.3d 1042, 1045 (5th Cir. 1997).

fundraiser), support their position that there is an insufficient nexus here between Coats's molestation of A.L. and J.B. and his position as a school bus driver.

Plaintiffs have failed to raise genuine issues of material fact to establish that J.B.'s or A.L.'s constitutional rights were violated under color of state law. While Coats was employed by the School Corporation, his molestation of J.B. and A.L. cannot be fairly linked to a school program or activity (school bus riding), or Coats's authority or duties as a school bus driver. Instead, his only sexual contact (and apparently only contact) with A.L. occurred during the summer when school was not in session. Coats was not working as a school bus driver at the time and there is no suggestion that Coats exploited his position as a bus driver to molest A.L. As for J.B., Coats's molestation of him began in the summer but continued through the school year. However, Plaintiffs offer no evidence to suggest that any of the molestation occurred on school property or in Coats's school bus. On the few occasions in which J.B. road Coats's bus to A.W.'s house, he was dropped off without incident. Coats did not drive the school bus when he went to pick up J.B. to take him to various places to have sex either. While J.B. is a closer case than A.L., since Coats's molestation of J.B. occurred during the school year and J.B. actually rode Coats's bus a few times, the evidence fails to raise a reasonable inference that Coats used his authority as a school bus driver to gain access to J.B. Coats's sexual molestation of J.B. was in no way connected to his duties as a bus driver. Thus, no real nexus existed between Coats's molestation of J.B. and his capacity as a school bus driver. Consequently, the alleged violations of J.B.'s constitutional rights did not occur under color of state law.

The Defendants cite *Stevens v. Ulmstead*, 131 F.3d 697 (7th Cir. 1997), and *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), for the proposition that a municipality or government entity may not be held liable for the harmful acts of private actors against third parties. With respect to A.L. and J.B., Coats was acting as a private actor when he molested them. The court therefore finds that Coats was not acting under color of state law when he molested J.B. and A.L.

The Defendants further contend that their lack of response to May's statements did not constitute deliberate indifference on their part, as the statements were vague and hearsay. Because Plaintiffs have insufficient evidence to satisfy the under color of state law requirement, the court need not reach this issue.

III. Conclusion

Plaintiff Jane Doe's Title IX claim will be **DISMISSED** for lack of standing and the Defendants Motion for Summary Judgment (Dkt. No. 72) is **GRANTED** as to the § 1983 claims of Mary Roe, Jane Doe No. 2, J.B. and A.L., and **DENIED** as to A.W.'s Title IX claim. Only A.W.'s Title IX claim remains for trial. No judgment will be entered on the claims subject to dismissal or summary judgment by the rulings in this entry until the remaining claim has been resolved.

ALL OF WHICH IS ENTERED this 29th day of August 2005.

John Daniel Tinder, Judge
United States District Court

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